

Advisory Action Before the Filing of an Appeal Brief		Application No. 10/777,566	Applicant(s) ESTRADA, JAMES J.
		Examiner SUZANNE LO	Art Unit 2128
<p>– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –</p> <p>THE REPLY FILED <u>25 March 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.</p> <p>1. <input checked="" type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input type="checkbox"/> The period for reply expires _____ months from the mailing date of the final rejection.</p> <p>b) <input checked="" type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p> <p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> <p>NOTICE OF APPEAL</p> <p>2. <input type="checkbox"/> The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p> <p>AMENDMENTS</p> <p>3. <input type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because</p> <p>(a) <input type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).</p> <p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p> <p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____.</p> <p>6. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>7. <input type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input type="checkbox"/> will not be entered, or b) <input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: _____.</p> <p>Claim(s) objected to: _____.</p> <p>Claim(s) rejected: _____.</p> <p>Claim(s) withdrawn from consideration: _____.</p> <p>AFFIDAVIT OR OTHER EVIDENCE</p> <p>8. <input type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p> <p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p> <p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p> <p>REQUEST FOR RECONSIDERATION/OTHER</p> <p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet</u>.</p> <p>12. <input type="checkbox"/> Note the attached <i>Information Disclosure Statement(s)</i>. (PTO/SB/08) Paper No(s). _____.</p> <p>13. <input checked="" type="checkbox"/> Other: <u>Interview Summary 04/08/08 attached.</u></p> <p style="text-align: right;">/Alexander J Kosowski/ Primary Examiner, Art Unit 2128</p>			

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are unpersuasive. In response to Applicant's argument that the claims are not indefinite, it is because it is unclear what is meant by "a plurality of differences", whether or not it refers to a single function which consists of a plurality of local differences or several functions which are also a plurality of differences. While the Examiner is well aware that a function is itself a plurality of differences, and had interpreted it as such, the Examiner thanks the Applicant for pointing that fact out.

In response to Applicant's argument that in order to render a claim obvious, a combination of prior art must disclose each and every limitation of the claims, the Examiner respectfully directs the Applicant to MPEP sections 2141(B) (prior art must be considered as a whole), 2141(III) (Prior art is not limited just to the references being applied, but includes the understanding of one of ordinary skill in the art.), and 2144.01 ("[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." In re Preda) as well as the statutory statement of 35 U.S.C. 103 where it notes that "A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The Examiner fails to find any requirement that a rejection under 35 U.S.C. 103 must disclose each and every limitation of the claims to render a claim obvious. Applicant's argument is unpersuasive.

Next, in response to Applicant's remark, "Regrettably, the Examiner fails to substantively explain Takemoto's disclosure, or how it renders claims 1 and 18 obvious when combined with Winter. Instead, the Examiner does little more than parrot back the applicant's claim language and conclusorily states that Takemoto discloses [quotation of mapping of prior art under 35 U.S.C. 103 rejection]". The Examiner respectfully directs Applicant to 35 CFR 1.3 which states "Applicants and their attorneys or agents are required to conduct their business with the United States Patent and Trademark Office with decorum and courtesy" The Examiner also respectfully reminds the Applicant that the Examiner provided the extensive prior art mapping of Takemoto to the Applicant's due to Applicant's remarks dated 11/07/07 that it is unclear to the Applicant what Takemoto discloses. Furthermore, rationale for the 103 combination has already been provided in terms of a motivational statement for the prior art combination.

In response to Applicant's argument that Winters and Takemoto do not disclose fitting a second power law function to an auxiliary function, Winters teaches fitting a second power law function to an auxiliary function (column 3, lines 67 - column 4, line 46) by using transfer functions. Additionally, Takemoto does indeed use color patches to determine gamma values as Takemoto discloses using correcting color by comparing a color to the scene (color patches). Finally, Takemoto discloses fitting a second power law function to an auxiliary function (column 7, lines 12-41).

However, the Examiner does thank Applicant's representative Arrienne Lezak and Brian Gustafson for providing a detailed explanation of the invention and prior art methodology in an in person interview and looks forward to corresponding with said representatives.